



DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2021-OPE-0077]

Negotiated Rulemaking Committee; Public Hearings

AGENCY: Office of Postsecondary Education, Department of
Education.

ACTION: Intent to establish negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations for programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The Department of Education is committed to advancing equitable outcomes for all students and invites comments from individuals, organizations, or groups with interests that are significantly affected by the subject matter of the proposed regulations being considered by the committee. We also announce public hearings at which interested parties may comment on the topics for regulation.

DATES: The dates, times, and locations of the public hearings are listed under the SUPPLEMENTARY INFORMATION section of this document. We must receive any written comments on or before November 3, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax. To ensure that we do not receive duplicate copies, please submit your comments only once.

In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Brian Schelling, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C188, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public (including those comments submitted by postal mail, commercial delivery, or hand delivery) available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html. For information about the public hearings or for additional information about negotiated rulemaking, contact: Brian Schelling, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C188, Washington, DC 20202. Telephone: (202) 453-

5966. Email: brian.schelling@ed.gov.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations.

After obtaining advice and recommendations from the public, the Secretary conducts negotiated rulemaking to develop the proposed regulations. We announce our intent to develop proposed title IV regulations by following the negotiated rulemaking procedures in section 492 of the HEA.

We intend to select participants for the negotiated rulemaking committee from nominees that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select individuals who reflect diversity among program participants.

We intend to convene a committee to develop proposed regulations affecting institutional and programmatic eligibility, including the 90/10 rule as described below. We will announce the topics and schedule of committee meetings in a subsequent *Federal Register* notice.

Regulatory Issue

The Department intends to regulate on what is commonly referred to as the 90/10 rule. Section 2013 of the American

Rescue Plan Act of 2021 (ARP) amended HEA section 487(a) (24) to require that a proprietary institution derive at least 10 percent of its revenues from sources that are not Federal education assistance funds. Federal education assistance funds are "Federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution." Section 2013(c) (2) of the ARP provides that regulations developed and published on 90/10 by the Department will not be effective until on or after January 1, 2023.

For more information on how the current 90/10 rule is implemented, see 34 CFR §668.28 and pages 91-94 of the 2020-2021 FSA Handbook at:

<https://fsapartners.ed.gov/sites/default/files/2021-03/2021FSAHbkVol2Master.pdf>.

After a complete review of the comments presented at the public hearings and in the written submissions, we will publish a document in the *Federal Register* announcing the specific topics for which we intend to establish a negotiated rulemaking committee and a request for nominations for individual negotiators for the committee who represent the communities of interest that would be significantly affected by the proposed regulations. We will also post this document on the Department's website at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

Public Hearings

We will hold virtual public hearings for interested parties to comment on the 90/10 rule only, on October 26, 2021, from 2:00 p.m. to 4:00 p.m., Eastern time, and on October 27, 2021, from 10:00 a.m. to 12:00 p.m., Eastern time.

In a *Federal Register* notice published on May 26, 2021, we announced public hearings held on June 21, 23, and 24, 2021. In that notice, we invited the public to comment on other proposed topics and also allowed the public to suggest other topics on which we might regulate.

Further information on the public hearings is available at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

Individuals who would like to comment at one of the public hearings must register by sending an email message to negreghearing@ed.gov no later than 12:00 p.m. Eastern time on the business day prior to the public hearing at which they want to speak. Please include the name of the speaker and one or more dates and times during which the individual would be available to speak. We will attempt to accommodate each speaker's preference for date and time; however, if we are unable to do so, we will make the determination based upon the time and date we received the message and allowing for a diversity of constituencies to present. We will limit each participant's comments to three minutes.

We will notify speakers of the time slot reserved for them and provide information on how to log in to the hearing as a

speaker. An individual may make only one presentation at the public hearings. If we receive more registrations than we can accommodate, we reserve the right to reject the registration of an entity or individual affiliated with an entity or individual that is already scheduled to present comments to ensure that a broad range of entities and individuals are able to present.

Individuals who want to observe the public hearing, but who do not want to present comments, must also register. Attendees who are not presenting comments will be muted for the duration of each public hearing. We will post attendee registration information on our website at www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html. We will also post transcripts of the hearings on that site.

The Department will accept written comments via the Federal eRulemaking portal and by postal mail, commercial delivery, or hand delivery through November 3, 2021. (See the ADDRESSES section of this document for submission information.)

Schedule for Negotiations

We anticipate that any committee(s) established after the public hearings would begin virtual negotiations no earlier than January 2022. We expect negotiations to occur during three sessions of five days each with approximately four weeks between sessions. We may adjust the number of days of each session and time between sessions to adapt to the virtual environment. We will publish the dates and details about these meetings in a subsequent notice in the *Federal Register* and

post information on our website at

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or portable document format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available for free on the site. You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

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for Policy, Planning, and Innovation.

[FR Doc. 2021-21505 Filed: 10/1/2021 8:45 am; Publication Date: 10/4/2021]